

## CALIFORNIA RETAILERS ASSOCIATION

### Food Warning Workgroup Critical Issues

California Retailers Association believes that any safe harbor approach to food warnings should satisfy four basic criteria in order to be acceptable to (and therefore likely to be employed by) retailers:

1. **Flexibility:** Retailers are not one-size-fits-all. The safe harbor method needs to be adaptable to the variety of operational approaches that are used by the many diverse retailers that sell food in California. It also needs to be able to fit to changing technology and consumer behavior.
2. **Fairly allocate burdens:** The statute and the regulations indicate the policy to put the burden on the producers to “provide warning materials.” That burden should be reflected in the allocation of responsibility in the safe harbor, so that the producer’s and retailer’s respective roles and liability for violating them are clear. Producers should be responsible for content, and retailers should be responsible for providing that content through the safe harbor method, so long as they have consented to do so. By the same token, the safe harbor should not invite producers to simply mail warning signs or labels to a retailer, without the retailer’s consent, and avoid responsibility for providing warnings.
3. **Ease of use:** The safe harbor needs to be written in a way that retailers and producers can actually use it, and that the warning is made available to the consumer, without requiring that warning “be provided separately to each exposed individual.”
4. **Clarity:** The safe harbor needs to be written in a way so that there is no question whether a producer or retailer has complied with it. Leaving questions of fact invites costly litigation, which turns into cost of defense settlements regardless of the merits.